Filed 4/13/12 In re T. B. CA1/5

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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| In re T.B., a Person Coming Under the Juvenile Court Law. | |
| CONTRA COSTA COUNTY BUREAU OF CHILDREN AND FAMILY SERVICES,<br>Plaintiff and Respondent,<br>v.<br>James B.,<br>Defendant and Appellant. | A132272<br>(Contra Costa County Super. Ct. No. J09-00775) |

The juvenile court terminated the parental rights of F.J. (Mother) and James B. (Father) with respect to their daughter, T. (Welf. & Inst. Code, § 366.26.)[1] Father appeals, arguing that: (1) the juvenile court improperly precluded him from presenting evidence regarding a relative placement; (2) substantial evidence does not support the juvenile court's determination that the sibling bond exception is inapplicable; (3) the juvenile court failed to consider T.'s wishes; and (4) the juvenile court erred by terminating his rights without proper notice under the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.). We find that only the last contention has merit, and remand

[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

the matter to the juvenile court for the limited purpose of ensuring compliance with the notice and inquiry provisions of ICWA. We otherwise affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Father has six children: James, T.B., Ezekiel, Jamie, T., and Joshua. T., with whom we are primarily concerned on appeal, is now six years old and was three years old when the instant dependency case began. T. was also the subject of a previous dependency proceeding, in which she was removed from Mother's custody. That dependency petition was dismissed after Father obtained sole custody. Thus, in March 2008, T. went to live with Father, her paternal grandmother (Janis B.), Father's girlfriend (Corey P.), and T.'s half siblings, Ezekiel, Jamie, and Joshua.

*Section 300 Petition*

In May 2009, the Contra Costa County Bureau of Children and Family Services (Bureau) filed a juvenile dependency petition, which alleged that Father had subjected T. to substantial risk of serious physical harm (§ 300, subd. (a)) and child cruelty (§ 300, subd. (i)). Specifically, it was alleged that, during an argument with Janis B., Father had poured gasoline throughout the living room of the home and threatened to burn the house down, while T. was present.[2] A lighter was found in Father's pocket. The petition also alleged that Mother failed to protect T. (§ 300, subd. (b)), in that Mother has a history of substance abuse.[3] The petition stated that "Indian child inquiry" had been made and that T. "has no known Indian ancestry." T. was detained in foster care.

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[2] Dependency petitions were also filed on behalf of T.'s half siblings, Ezekiel and Jamie, who were present in the home. Ezekiel and Jamie have a different mother, T.J., and, although for a time the cases were joined, Ezekiel and Jamie were ultimately placed with her. That order is not the subject of the instant appeal. A dependency petition was also filed for Joshua, whose mother is Corey P. The petition was dismissed after Corey P. moved out of the home she had shared with Father. James and T.B. live with their mother and were not involved.

[3] An amended dependency petition was filed on June 30, 2009. The petition contained the same allegations, as well as an allegation that Mother had previously failed to reunify with two of her other children. Because Mother does not appeal, we will only discuss facts pertaining to her as they relate to Father's claims on appeal.

*Jurisdiction Report and Determination*

The jurisdiction report indicated that T. and her half siblings, Ezekiel and Jamie, had been placed in a relative's home. The report indicated that Father told the social worker that T. may have American Indian heritage. He told the social worker to " 'Look at previous files.' "

At the jurisdiction hearing, Father entered a no contest plea to the allegations under section 300, subdivision (a). The court adjudged T. to be a dependant of the juvenile court, and dismissed the remaining allegations.

*Disposition Report and Hearing*

The disposition report, filed by the Bureau on December 9, 2009, recommended that reunification services be offered to Father, but not Mother, pursuant to section 361.5, subdivision (b)(10). The report indicated that T., Ezekiel, and Jamie were living with a foster family. The foster parents reported: "[T.] is very 'clingy.' She would rather spend her time in the home right next to the foster parents or sitting on their lap. [T.] does not display any other emotional concerns." The report stated: "It is clear that [Father] loves his children and is concerned for their overall wellbeing. The children have extended family and half siblings that care about them and share a strong relationship together."

With respect to ICWA, the report also stated: "[Father] indicated that he has no Native American Indian Heritage. In a prior dependency . . . , the Status Review dated June 9, 2008, indicates that [Mother] may have Apache Tribe ancestry. Multiple tribes were noticed with results showing that there are no registries for [T.] . . . ."

The Bureau further indicated it had considered and rejected T.'s maternal great-grandmother and Janis B. as possible relative placements.[4] The social worker was not comfortable placing T. with Janis B., "due to the inappropriate and harmful interactions between [Janis B.] and the father. The children reported witnessing on-going and constant fighting between their father and their grandmother while in their home.

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[4] In advance of the disposition hearing, Janis B. submitted a de facto parent request, which was later withdrawn.

[¶] . . . The Bureau is concerned that placing the children with the grandmother would exacerbate the on-going, volatile dynamics between mother and son."

At the contested disposition hearing, on December 9, 2009, the court found that removal from Father's custody was required. The juvenile court's dispositional order stated: "Care, custody, control & conduct of [T.] shall be under supervision of [Bureau], which may place child in approved relative's home, cert./lic. family home, Foster Fam. Agency or lic. group home." The court ordered bypass of reunification services for Mother.

*ICWA Forms*

On May 27, 2010, Judicial Council Forms, form ICWA-010(A) was completed by the social worker, which indicated that T. "is or may be a member of or eligible for membership" in the Apache and Pomo tribes. The form indicated that the maternal great-grandmother was the source of the information.

*Twelve-Month Review Hearing*

In the 12-month review report, the Bureau recommended that reunification services be terminated and a section 366.26 hearing be set. The review report stated: "The foster mother reports that [T.] has quite a temper. There have been a few reports from [T.]'s Head Start Program where [T.] has hit other children. A referral for therapy was submitted by the foster parent to the Head Start Program for [T.] to be seen by their on site therapist." The report indicated that the children were not placed with Janis B. because they alleged she hit them on their backs and "flicked" them on the head. The report also indicated that the social worker had contacted T.'s maternal great-grandmother and obtained information to complete ICWA notice.

At the 12-month review hearing, the Bureau conceded that Father had substantially completed his case plan, but argued that, nonetheless, "the causes that brought us here have not been ameliorated to the point" that T. could be safely returned to her Father's care. The social worker testified that Father lacked insight into how traumatized his children were by his behavior. Father had told the social worker that his behavior may have been caused by high blood sugar levels because he is a diabetic. The

court found that return would create a substantial risk of detriment, terminated Father's reunification services, and set a hearing under section 366.26. Father filed a notice of intent to file writ petition, but no writ petition was filed.

*Section 366.26 Hearing*

The section 366.26 hearing was originally calendared for March 3, 2011. On December 6, 2010, the Bureau submitted a memorandum to the court, which indicated its determination that T. was adoptable. The memo indicates: "A permanent home for [T.] has been identified with a caregiver that has an established relationship with her and the transition to this home is underway."

On March 3, 2011, the section 366.26 hearing was continued after the Bureau discovered that ICWA notice to two Apache tribes was incomplete. On that same day, Father indicated, for the first time, that he may have Indian ancestry. Father was ordered to provide any further information by March 7, 2011. At the next scheduled hearing date, on April 19, 2011, the section 366.26 hearing was again continued, when Father's counsel had a family emergency.

On May 25, 2011, the Bureau filed a section 366.26 hearing report. The report recommended that Mother's and Father's parental rights be terminated so that T. could be adopted by potential adoptive parents, with whom she had been living since April 1, 2011. The report noted: "[T.] is an adoptable child. [T.]'s potential adoptive family is willing and able to provide her with stability, permanence, diligent care, and love."

It was reported that T. was doing very well in the potential adoptive family's care and had shown great improvement with respect to her acting out behaviors. She appeared to be comfortable and happy. T.'s acting out had lessened after unsupervised visits with her maternal great-grandmother ceased. She was in therapy, which the potential adoptive family planned to continue.

With respect to T.'s half siblings, the report noted: "[T.] did reside with two of her siblings in foster care, Jamie and Ezekiel before they returned to the care of their mother in San Diego, CA. Since then, she has telephone contact with them. [T.] has not

had contact with Joshua since he returned to the care of his mother. Three of [T.]'s maternal siblings . . . have been adopted."

The report stated: "[T.] does not fully understand the concept of adoption, but understands that she may not be able to return to the care of her mother or father. [T.] has expressed that although she liked visiting with her father at times, she does not wish to live with him or her paternal grandmother. Although [Father] has made an effort to visit regularly with [T.] and completed some of his case plan, he has not made an effort to demonstrate any ability to provide for the safe, stable, and long term care of [T.]. The relationship which exists between [T.] and [Father] does not outweigh the benefit of long term permanency for [T.]. . . . [¶] Similarly, the relationship that exists between [T.] and her half-siblings does not outweigh the benefits of long term permanency for [T.]. Furthermore, the potential adoptive parents are open to the continuation of a relationship between [T.] and her half-siblings, as long as it is safe and appropriate."

With respect to ICWA, the report provides: "[A] request to continue the 366.26 hearing was made in order to re-notice several of the Indian tribes, as it was discovered that some of the tribes had not responded and some notices were sent to incorrect addresses. Furthermore, . . . the father stated that he recently learned that he may have Native American Indian background on his paternal and maternal sides of the family. . . . The Bureau received information from [Father] and also interviewed his mother . . . on March 9, 2011. . . . [¶] . . . [¶] [B]oth reported that they believe they have Cherokee heritage on both the maternal and paternal side of the family. [They] provided the names of several family members, but did not have additional birth dates, death dates, or previous addresses for the distant relatives. Notice was sent to all Cherokee tribes as well as the Bureau of Indian Affairs. Furthermore, notice was re-sent to several of the Pomo and Apache tribes due to incorrect mailing addresses used in the previous noticing of the tribes." Some tribes responded with written notification that T. was not eligible for membership. The remainder did not respond to notice.

At the contested section 366.26 hearing, the Bureau submitted copies of the ICWA notices, as well as certified mail receipts, return receipts, and responses from various

tribes. The same day, both Father and Janis B. filed parental notification of Indian status forms (Judicial Council Forms, form ICWA-020). Father's form indicated that "[o]ne or more of [his] . . . grandparents . . . was a member of [the Cherokee] tribe." Janis B.'s form indicated that she "may have [Cherokee] ancestry" through her paternal grandmother, who she named as Sarah Thomas Booker-Harris Rogers or Sarah Thomas Booker-Rogers Harris.

The social worker, Debra Bidwell, testified that T. had been in the same foster care home with Jamie and Ezekiel, before they returned to their mother's home. The foster parent did not wish to adopt. After Jamie and Ezekiel moved, T. told her foster mother that she missed them. But after speaking to them on the phone, T. was fine.

Although Bidwell had not directly observed visits between Father and T., she had been told Father acted appropriately, they were affectionate, and that T. calls him "dad." However, T. told Bidwell that "she did not want to see [Father] anymore . . . ." Bidwell had not observed T.'s interactions with her half siblings. Bidwell had not received information indicating T. had a "close" relationship with Joshua, although T. had visited with Joshua. The foster mother told Bidwell that Ezekiel and T. "got along okay, but . . . that they weren't particularly close." T. did not report missing her siblings. Bidwell testified that T. was calling her prospective adoptive parents "mom" and "dad," was affectionate with them, and had expressed being happy. Bidwell said: "Her behaviors and acting-out behaviors are just about gone. . . . She's just . . . made an excellent transition to the home." Bidwell opined that T. was adoptable, stating: "[S]he has no medical or developmental problems. Her behaviors, in my opinion, at this time, are within normal limits of a child her age. Her acting out is not excessive at this point. [¶] She's a very affectionate, smart, happy child. I do not believe I would have a problem in finding a home for her."

Father testified that T. lived with him, Ezekiel, Jamie, and Joshua, between March 2008 and May 27, 2009. He described the sibling relationship as "normal." He said: "They played. They fought." After she was removed from his custody, Joshua went with Father to every visit with T. He testified: "[W]hen we are leaving the one-

hour visit twice a month, [T. and Joshua] both look . . . like they just had their puppy snatched from them." According to Father, Jamie and Ezekiel had been in T.'s life since she was born. Prior to obtaining custody of T., Father, Jamie, and Ezekiel visited her two or three times a week. Father said that T. asked about Jamie and Ezekiel after they left for San Diego.

Janis B. testified: "[T.] followed Jamie . . . like a puppy. You know, she was always following Jamie. She and Joshua are very close in age. They were more like twins than siblings." Whatever Jamie did, T. wanted to do.

Both T.'s counsel and the Bureau recommended that parental rights be terminated. Father's counsel argued that the Bureau had not met its burden of showing T. was adoptable, that, in any case, the sibling bond and parental bond exceptions to termination had been proved, and that T.'s wishes had not been shown. Mother did not appear at the hearing.

The juvenile court concluded that notice had been given as required by law, found that T. was not an Indian child, found that it was likely T. would be adopted, terminated Mother's and Father's parental rights, and selected adoption as the permanent plan for T. The court concluded that "the bond that exists [between T. and Father and T. and her half siblings] is not of significance that would outweigh the benefit of permanence for this child." Father filed a timely notice of appeal.

## II. DISCUSSION

Father does not challenge the juvenile court's finding that T. is likely to be adopted. Rather, Father contends that the order terminating parental rights must be reversed because: (1) the juvenile court improperly precluded him from presenting evidence regarding a relative placement; (2) substantial evidence does not support the juvenile court's determination that the sibling bond exception is inapplicable; (3) the juvenile court failed to consider T.'s wishes; and (4) the juvenile court erred by terminating his rights without proper notice under ICWA. As we have previously noted, only the last argument has merit.

A. *Placement with Nancy B.*

Father argues that, at the section 366.26 hearing, the juvenile court erred by precluding him from presenting evidence regarding placement with his sister, Nancy B. He argues that the evidence was not irrelevant and that both the court and the Bureau failed in their duty, under section 361.3, to give preference to a relative placement request.[5] He further asserts that "[the evidentiary] ruling was prejudicial . . . because it

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[5] Section 361.3 provides, in relevant part: "(a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, *preferential consideration shall be given to a request* by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of the following factors: [¶] (1) The best interest of the child, including special physical, psychological, medical, or emotional needs. [¶] (2) The wishes of the parent, the relative, and child, if appropriate. [¶] (3) The provisions of . . . the Family Code regarding relative placement. [¶] (4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interest of each of the children . . . . [¶] (5) The good moral character of the relative . . . . [¶] (6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful. [¶] (7) The ability of the relative to do the following: [¶] (A) Provide a safe, secure, and stable environment for the child. [¶] (B) Exercise proper and effective care and control of the child. [¶] (C) Provide a home and the necessities of life for the child. [¶] (D) Protect the child from his or her parents. [¶] (E) Facilitate court-ordered reunification efforts with the parents. [¶] (F) Facilitate visitation with the child's other relatives. [¶] (G) Facilitate implementation of all elements of the case plan. [¶] (H) Provide legal permanence for the child if reunification fails. [¶] . . . [¶] (I) Arrange for appropriate and safe child care, as necessary. [¶] . . . [¶] The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the child will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. . . . [¶] (b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a). [¶] (c) For purposes of this section: [¶] (1) 'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated. [¶] (2) 'Relative' means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship,

deprived him of the possibility that a permanent plan that did not require termination of his parental rights would be ordered." We review the juvenile court's determinations regarding the admissibility of evidence for abuse of discretion. (*In re Cindy L.* (1997) 17 Cal.4th 15, 35.)

1. *Background*

Before the section 366.26 hearing, the record is devoid of any reference to a request for placement by Nancy B. On December 6, 2010, the Bureau submitted a memo to the Court, which indicated: "[T]he Bureau determined that [T.] is considered to be an adoptable child and the recommended permanent plan will be adoption . . . and thus the case was transferred to the adoption unit. A permanent home for [T.] has been identified with a caregiver that has an established relationship with her and the transition to this home is underway." The memo was provided to Father's counsel, on December 6, 2010. It appears that counsel discussed the memo with Father no later than December 13, 2010. Despite being aware of the Bureau's intent to change T.'s placement, Father's counsel did not raise the issue of relative placement at any of the hearings that took place on December 13, March 3, 2011, April 19, 2011, or April 21, 2011. Instead, Nancy B. made her first appearance on April 19, 2011, after T. had already been placed with her prospective adoptive family, and even then only vaguely requested to make "a

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including stepparents, stepsiblings, and all relatives whose status is preceded by the words 'great,' 'great-great' or 'grand' or the spouse of any of these persons even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling. [¶] (d) *Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements*. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child. [¶] (e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied." (Italics added.)

statement."[6] Nancy B. did not indicate that she requested placement of T., either orally or by way of a written request after the hearing.

At Nancy B.'s next appearance, on May 25, 2011, Father's trial counsel represented to the court that "[Nancy B.] would testify that she sought relative placement of the minor child and was advised that her application would not be reviewed because the child was apparently going to a concurrent home for potential adoptive placement. [¶] This will be in support of my client's testimony, that he made efforts to seek relative placement of this child and that those efforts were, at least from his perspective, not complied with by the Department, and as such, the child has been placed in foster care and in a concurrent home without an opportunity for her to be placed with a relative. [¶] . . . [¶] . . . Also, that she is ready, willing and able to have the child placed with her. [¶] And as the Court is aware from reviewing the reports, [T.] has only recently been placed in a concurrent home." County counsel argued: "I don't see how any testimony with regard to relative placement, without a [section] 388 petition pending before the Court, seeking relative placement, is relevant." County counsel also asserted she had no notice that the issue would be before the court. The court asked if Nancy B. had sought review of the denial of her relative placement application. Father's counsel responded: "I don't know if [Nancy B.] actually produced a relative placement application because both she and my client were told that it would be denied."

The court decided that Nancy B.'s testimony would be irrelevant and stated: "The remedies are clear if relative placement is denied. . . . Then . . . not the parents, but certainly the relatives can seek . . . judicial review. That was never done."

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[6] Counsel specially appearing for Father asked "if she could be allowed to say something just as a typical relative—not to testify, but have a statement to the Court." The court replied: "If she wants to testify at some point, she can testify, subject to cross-examination of the parties. [¶] It's not a circumstance, given this stage of the proceedings, where I can allow somebody to show up and make a statement. If they want to write something to the Court, I will share it with all the parties. I will consider those statements."

2. *Analysis*

Father argues that the juvenile court abused its discretion and that "[t]he juvenile court is required to consider the relative placement issue at the time of the section 366.26 hearing when it appears that the [Bureau] may have violated the provisions of section 361.3." We will assume that Father has standing to raise the issue on appeal. (See *In re K.C.* (2011) 52 Cal.4th 231, 236–239; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053–1054; *In re H.G.* (2006) 146 Cal.App.4th 1, 10; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034–1035 (*Cesar V.*).) However, his argument is nonetheless without merit. The juvenile court did not abuse its discretion in determining that Nancy B.'s testimony was irrelevant.

The issues before the juvenile court at a section 366.26 hearing are: (1) whether the minor is adoptable; and (2) whether any exceptions to adoption apply. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 160; accord, § 366.26, subd. (c).) Thus, the Bureau argues that, since no section 388 petition was filed, the relative placement issue was not properly before the court. Section 388, subdivision (a), provides, in relevant part: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . ." Contrary to Father's assertion, there was a prior court order—the court's dispositional order—of which modification could have been sought, by way of a section 388 petition. The court's dispositional order vested the Bureau with custody and the discretion to select a suitable placement for T. Father urges us to conclude that a section 388 petition is not required, pointing out that "there is no reported case holding that a section 388 petition is required before the court may consider [relative placement.]"

We need not resolve this issue, because even if the court was required to accept an oral motion on the day of the section 366.26 hearing, no abuse of discretion has been shown. Father's offer of proof did not suggest that Nancy B.'s proposed testimony was relevant, under section 361.3. Section 361.3, subdivision (d), provides: "Subsequent to the [dispositional] hearing . . . , *whenever a new placement of the child must be made,*

*consideration for placement shall again be given* as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child." (Italics added.) There is no evidence in the record that Nancy B. requested placement until after T. had been in her prospective adoptive home for almost two months.

By the time of the section 366.26 hearing, Nancy B. was not entitled to relative placement preference. "It is well-established that the relative placement preference found in section 361.3 does not apply after parental rights have been terminated and the child has been freed for adoption." (*Cesar V., supra,* 91 Cal.App.4th at p. 1031.) Furthermore, it is established that, "[w]hen reunification has failed . . . and the juvenile court has before it a proposed permanent plan for adoption, the only relative with a preference is a 'relative caretaker' (if there is one seeking to adopt) and the only preference is that defined by subdivision (k) of section 366.26 (that is, a preference to be first in line in the application process.) [Citation.]"[7] (*In re Sarah S.* (1996) 43 Cal.App.4th 274, 285–286; see also *In re Lauren R.* (2007) 148 Cal.App.4th 841, 855 ["[t]here is no relative placement preference for adoption"].) Because there is nothing in the record that suggests Nancy B. was ever T.'s caretaker, the court was justified in concluding that Nancy B.'s testimony would be irrelevant.

Father's reliance on *Cesar V., supra,* 91 Cal.App.4th 1023 is misplaced. In *Cesar V.*, the father raised the issue of placement with his mother at the 12-month review

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[7] Section 366.26, subdivision (k), provides: "Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being."

hearing, at which he also stipulated to termination of reunification services. Thus, when the children's foster parents indicated they were not interested in adoption and a change of placement was necessitated, all parties stipulated to a placement evaluation of the paternal grandmother. A permanency hearing was set. (*Id.* at p. 1027.) But, before the hearing, the social worker reported that the children had been placed in a prospective adoptive home, rather than with the paternal grandmother. The social worker found the paternal grandmother unsuitable because of prior reports of child abuse and because she had shown little diligence in following up with the social worker regarding placement. (*Id.* at pp. 1027–1028.) At the permanency hearing, the father's counsel was permitted to make an oral motion that the social services agency abused its discretion in denying placement with the paternal grandmother and the parties stipulated to a bifurcation of the proceeding, with the placement issue considered before the section 366.26 hearing. (*Id.* at p. 1028.) After hearing testimony, the juvenile court determined that section 361.3 applied and that the social services agency had not abused its discretion in denying placement. (*Id.* at pp. 1029–1030.)

On writ review, father and the paternal grandmother argued that, under section 361.3, the court should have independently reviewed the placement decision. The social services agency argued, in response, that section 361.3 did not apply because reunification services had been terminated. (*Cesar V., supra*, 91 Cal.App.4th at pp. 1030–1031.) The *Cesar V.* court rejected the latter argument, holding that the relative placement preference "applies when a new placement becomes necessary after reunification services are terminated but *before parental rights are terminated and adoptive placement becomes an issue*." (*Id.* at p. 1032, italics added.) Because "the social worker did not make significant efforts to gather the required information before deciding [the paternal grandmother] was unsuitable and abandoning the assessment," the court reversed the juvenile court's finding that the agency had not abused its discretion. (*Id.* at pp. 1033, 1036.)

In *Cesar V.*, the father raised the placement issue at an earlier juncture—reunification services had been terminated and the children needed a temporary

placement pending the section 366.26 hearing. The social services agency was looking ahead to potential adoptive placement, but the children had not yet been referred for adoptive placement. (*Cesar V., supra,* 91 Cal.App.4th at p. 1034; *In re Lauren R., supra,* 148 Cal.App.4th at p. 858.) *Cesar V.* simply did not hold that section 361.3's relative placement preference would apply when, as in this case, the placement issue is not raised until the parties convene for a section 366.26 hearing, at which time adoption has been identified as the proposed permanent plan.

The juvenile court did not abuse its discretion in concluding that evidence regarding placement with Nancy B. was irrelevant to the issues at the section 366.26 hearing.

B. *Sibling Bond Exception*

Next, Father asserts that substantial evidence does not support the juvenile court's finding, made pursuant to section 366.26, subdivision (c)(1)(B)(v), that the sibling bond exception to termination of parental rights is inapplicable.

"Adoption, where possible, is the permanent plan preferred by the Legislature. [Citation.]" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) "[I]n order to terminate parental rights, the court need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated. . . . '[T]he critical decision regarding parental rights will be made at the dispositional or review hearing, that is, that the minor cannot be returned home and that reunification efforts should not be pursued. In such cases, the decision to terminate parental rights will be relatively automatic if the minor is going to be adopted.' [Citation.] " (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249–250; accord, § 366.26, subd. (c).)

Thus, at a section 366.26 hearing, "[a] finding . . . under Section 366.21 . . . that the court has continued to remove the child from the custody of the parent . . . and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights. Under these circumstances, the court shall terminate parental rights unless . . . : [¶] . . . [¶] (B) The court finds a compelling reason for determining that

termination would be detrimental to the child due to . . . : [¶] . . . [¶] (v) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).) "[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence. [Citation.]" (*In re Megan S.* (2002) 104 Cal.App.4th 247, 252.) "Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption." (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469; accord *In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Appellate courts have routinely applied the substantial evidence rule when reviewing a juvenile court's determination that an exception to termination did not apply. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947 (*L.Y.L.*); *In re Autumn H., supra*, 27 Cal.App.4th at pp. 576–577.) However, Division Three of this court has held that abuse of discretion is the proper standard. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*).) A third standard of review was recently articulated by the Sixth District, in *In re I.W.* (2009) 180 Cal.App.4th 1517. The Sixth District concluded: "[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*Id.* at p. 1528.) We need not resolve this conflict, because the juvenile court's finding is supported under an abuse of discretion standard, a traditional

substantial evidence standard, or the standard articulated in *In re I.W.* The practical differences between the standards are "not significant," as all three give deference to the juvenile court's judgment. (See *Jasmine D., supra,* 78 Cal.App.4th at p. 1351.)

First, we consider the strength of T.'s relationship with her half siblings. "Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship. To determine the significance of the sibling relationship, the court considers the factors set forth in section 366.26, subdivision [(c)(1)(B)(v)]." (*L.Y.L., supra,* 101 Cal.App.4th at p. 952, fn. omitted.) Father asserts that the juvenile court failed to consider the factors set forth in section 366.26, subdivision (c)(1)(B)(v), in determining the applicability of the exception. Although the juvenile court did not specifically state on the record that it was considering these factors, we know of no requirement that the court do so. Father has not cited any authority that supports his assertion that such a statement is required. The evidence presented closely tracked the above factors. Thus, the record supports an inference that the trial court considered the relevant factors and nonetheless, found the exception did not apply.

Here, T., Ezekiel, Jamie, and Joshua lived together with Father for 14 months. T. also lived with Ezekiel and Jamie with the original foster parents for approximately one year, before Ezekiel and Jamie moved to San Diego. Thus, they had similar experiences while living in the same foster home and went through the dependency process together. T. lived with Joshua in Janis B.'s home, while Joshua was an infant, and then saw him through his attendance at most of Father's visits with T. Despite this common experience, the social worker did not believe T. had a particularly close relationship with any of her half siblings. After Jamie and Ezekiel moved to San Diego, T. told her foster mother that she missed them. But after speaking to them on the phone, T. was fine. There was evidence that T. enjoyed playing with her half siblings. And, Father did testify that Joshua and T. looked "like they just had their puppy snatched from them" when visits would come to an end. Although the evidence is conflicting, we will assume, for

the sake of argument, that this evidence compelled a conclusion that T. would suffer detriment if the relationship with her half siblings was terminated.

But, this is far from the end of the analysis. Even if severance of the sibling relationship would harm T., the juvenile court correctly determined that the benefit to the child of continuing the sibling relationship did not outweigh the benefit that adoption would provide. In enacting the sibling relationship exception, "the Legislature intended the courts . . . to balance the benefit of the child's relationship with his or her siblings against the benefit to the child of gaining a permanent home by adoption in the same manner the court balances the benefit of the child's continued relationship with the parent against the benefit to the child of gaining a permanent home by adoption when considering the section 366.26, subdivision (c)(1)(A) exception. The court must balance the beneficial interest of the child in maintaining the sibling relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer." (*L.Y.L., supra,* 101 Cal.App.4th at p. 951.) Valuing T.'s continuing relationship with her half siblings over adoption would deprive her of the ability to belong to a stable and secure family, which is not in her best interest. "[T]he application of [the sibling relationship] exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount. [Citation.]" (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.)

Moreover, the relationships between T. and her half siblings will not necessarily end upon termination. T.'s prospective adoptive parents have expressed that they are open to maintaining T.'s sibling ties after adoption. Section 366.29 permits post-adoption contact between siblings. And, contrary to Father's suggestion, the juvenile court could properly rely on this evidence in concluding that T. was not subject to the sibling bond exception. (See *In re S.B.* (2008) 164 Cal.App.4th 289, 300; *In re Valerie A., supra,* 152 Cal.App.4th at p. 1014; *In re Megan S., supra,* 104 Cal.App.4th at p. 254.) Substantial evidence supports the conclusion that the sibling bond exception does not

apply.[8] No abuse of discretion has been demonstrated. The evidence in support of Father's position was not of such a character and weight as to leave no room for a judicial determination that it was insufficient to support application of the exception.

C. *Consideration of T.'s Wishes*

Next, Father challenges the termination of parental rights on the ground that the juvenile court failed to consider T.'s wishes. Specifically, he argues that there was no evidence of T.'s wishes concerning adoption or her desire for a continued relationship with her half siblings. The record does not support Father's contention.

Section 366.26, subdivision (h)(1), provides: "At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child." This statutory mandate has been interpreted "as imposing a mandatory duty on the courts to 'consider the child's wishes to the extent ascertainable' prior to entering an order terminating parental rights under section 366.26, subdivision (c). [Citation.] [T]his statement 'may take the form of direct formal testimony in court; informal direct communication with the court in chambers, on or off the record; reports prepared for the hearing; letters; telephone calls to the court; or electronic recordings.' [Citation.]" (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1591 (*Leo M.*), fn. omitted.) The statute does not require that the child testify. (*Id.* at p. 1591, fn. 6; *In re Jesse B.* (1992) 8 Cal.App.4th 845, 852–853.)

"While a direct statement of a minor's feelings regarding termination is certainly the most dispositive of the minor's wishes, it will not always be possible or in the minor's best interest to obtain such a statement. For example, some children are simply too young or too immature to understand the concept of termination of parental rights, let alone express their feelings about such a prospect, while others may be permanently and

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[8] Father misplaces his reliance on *In re Naomi P.* (2005) 132 Cal.App.4th 808, 823–824, in which the reviewing court held that substantial evidence supported the juvenile court's determination that the sibling exception applied. That holding does not compel a conclusion that the juvenile court's determination, in this case, was not supported by substantial evidence.

severely traumatized if asked to grapple with the possibility of severing all ties to their biological parents. [¶] The process must be sufficiently flexible to provide some accommodation to the varying circumstances that will inevitably present themselves. Therefore, we believe the decision in a termination action whether to require a direct statement from the minor regarding his/her thoughts is one that is best left to the sound discretion of the trial judge." (*Leo M., supra,* 19 Cal.App.4th at p. 1592.)

In *Leo M.*, there was no direct evidence of the child's preferences. There was also no evidence that showed the five-year-old child was incapable of commenting on his relationships with his mother and prospective adoptive parents. (*Leo M., supra,* 19 Cal.App.4th at p. 1593.) However, the court observed: "[W]hile the record contains no direct evidence of Leo's thoughts on this matter, it does include ample evidence from which his feelings can be inferred." (*Ibid.*) The adoptions worker had reported that Leo had formed a substantial bond with his prospective adoptive parents and commented that they are " 'the only parents that [Leo] can recall.' " (*Ibid.*) It was also reported that Leo did not recognize or acknowledge his mother during the one visit they had during reunification. (*Ibid.*) Thus, the court stated: "[E]ven though Leo did not directly express his wishes, it is a reasonable and compelling inference on this evidence that Leo would prefer to live with the only mother and father he has acknowledged. Further, there is nothing before us to support the conclusion that not taking direct evidence of Leo's wishes was an abuse of discretion or was prejudicial under the circumstances of this case. Therefore, we find sufficient evidence here to conclude the court could reasonably ascertain the wishes of Leo." (*Id.* at p. 1594.)

In *In re Amanda D.* (1997) 55 Cal.App.4th 813, the Fourth District followed *Leo M.* and held that the statutory requirement had been complied with when "there was a reasonable basis for inferring the minors' wishes." (*Amanda D., supra,* 55 Cal.App.4th at pp. 819–821.) The minors did not testify at the termination hearing, but five-year-old David talked about " 'my home, my room, my dog,' " in referring to his life with the prospective adoptive parents. (*Id.* at p. 820.) There was also evidence that both he and his seven-year-old sister were apathetic about visiting their father. The record showed

that Amanda's behavioral problems had improved since being placed with the prospective adoptive parents. (*Id.* at pp. 816–817, 820.) Based on this evidence, the court concluded that "[t]here was sufficient evidence for the court to assess the minors' wishes and their best interests." (*Id.* at p. 821.) The court also noted: "[N]othing would have been gained by eliciting [Amanda's] wishes directly because she had 'no solid concept of adoption and what that means.' " (*Id.* at pp. 820–821.)

Contrary to Father's assertion, the Bureau's section 366.26 reports did directly address T.'s wishes. One of the reports specifically stated: "[T.] does not fully understand the concept of adoption, but understands that she may not be able to return to the care of her mother or father. [T.] has expressed that although she liked visiting with her father at times, she does not wish to live with him or her paternal grandmother." Although Father's counsel argued there had been an insufficient showing that T.'s wishes with respect to her half siblings had been expressed, he did not challenge the Bureau's assertion that she did not understand the concept of adoption.

In any event, the reports and testimony also contained evidence from which the court could infer T.'s wishes. For instance, the Bureau noted that T. was "comfortable and happy" in her prospective adoptive family's care and that her behavioral issues were improving. The social worker testified that T. talked fondly of her prospective adoptive parents, referring to them as "mom" and "dad." The social worker also testified that, when asked "Who do you miss?" after moving in with the prospective adoptive family, T. did not mention her half siblings. Finally, T. was represented by independent counsel at the hearing. Her counsel concurred in the Bureau's recommendation for termination of parental rights. We presume that counsel complied with section 317, subdivision (e)(2), and asked the child about her wishes with respect to her Father and her half siblings.[9]

[9] Section 317, subdivision (e)(2), provides, in relevant part: "If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes."

(See *Jesse B., supra,* 8 Cal.App.4th at pp. 852–853.) The record shows that the juvenile court considered T.'s wishes.

D. *ICWA*

Finally, Father argues that the termination order must be reversed because ICWA notice was not properly given.

The ICWA protects "Indian children who are members of or are eligible for membership in an Indian tribe." (25 U.S.C. § 1901(3).) For purposes of the ICWA, " 'Indian child' means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) But, the Indian status of a child need not be certain to trigger ICWA's notice requirements. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471; *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1422.) And a child may be an "Indian child" under ICWA even if neither of the child's parents is enrolled in a tribe. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 254 (*Dwayne P.*).) A "suggestion" that the child is an Indian child is sufficient to invoke notice. (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1198; accord *In re Merrick V.* (2004) 122 Cal.App.4th 235, 246; *In re Gerardo A.* (2004) 119 Cal.App.4th 988, 991 ["one of the purposes of ICWA notice is to enable the tribe to investigate whether a child is eligible for tribal membership"]; *In re Nikki R.* (2003) 106 Cal.App.4th 844, 848 ["determination of a child's Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement"]; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408 ["[g]iven the interests protected by [ICWA], the recommendations of the [federal] guidelines, and the requirements of our court rules, the bar is indeed very low to trigger ICWA notice"]; *Dwayne P., supra,* 103 Cal.App.4th at p. 258 [concluding that the "minimal showing" required to trigger notice under the ICWA is merely evidence "suggest[ing]" the minor "may" be an Indian child].)

ICWA provides: "[W]here the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of

parental rights to, an Indian child shall notify . . . the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of . . . the tribe cannot be determined, such notice shall be given to the Secretary [of the Interior] in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by . . . the tribe or the Secretary . . . ."[10] (25 U.S.C. § 1912(a).) When the notice provision is violated, an Indian child, parent, Indian custodian, or the Indian child's tribe may petition to invalidate the proceeding. (25 U.S.C. § 1914.)

The federal ICWA notice provisions are incorporated into California law. (See §§ 224–224.3.) Thus, section 224.2, subdivision (b), similarly provides: "Notice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing thereafter . . . unless it is determined that [ICWA] does not apply to the case in accordance with Section 224.3."

"ICWA itself does not expressly impose any duty to inquire as to American Indian ancestry; nor do the controlling federal regulations." (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.) But, California law imposes "an affirmative and continuing" duty on the court and the county welfare department "to inquire whether a child . . . is or may be an Indian child . . . ." (§ 224.3, subd. (a).) "If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2, contacting the [BIA] and the State Department of Social

[10] "[N]otice to the Secretary [of the Interior] is accomplished by notice to the BIA [(Bureau of Indian Affairs)]. [Citations.]" (*In re Antoinette S., supra,* 104 Cal.App.4th at p. 1406.)

Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in and contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (§ 224.3, subd. (c).)

1. *Background*

At the May 25, 2011 hearing, the Bureau submitted evidence of the ICWA notice sent to the BIA, the Apache, Pomo, and Cherokee tribes, the return receipt cards, and all correspondence received on the issue. Some tribes responded with written notification that T. was not eligible for membership. The remainder did not respond to notice. One such letter, dated November 23, 2010, was from the Yavapai-Apache Nation. The letter stated: "The information that has been provided on this case's ancestry is insufficient to conduct a search for membership eligibility. We have determined that the child is not a member of the Yavapai-Apache Nation. [¶] We need additional information on ancestry to determine whether they are eligible for membership with the Nation. Additional information would include grandparents, great-grandparents to include dates of birth, dates of death, maiden names and tribal affiliation. Tribal membership is based on descendents, therefore, there needs to be a clear link from the child to the furthest relative claiming to be an Indian. [¶] Unless additional information can be provided, please remove the Yavapai-Apache Nation from future correspondence regarding this child."

After the notices and correspondence had been presented, T.'s counsel observed that the letter from the Yavapai-Apache Nation had requested further information on ancestry. T.'s counsel asked if the Bureau had responded. County counsel responded: "No, we normally don't respond to the letter because this is a form letter. [¶] . . . [¶] We provide them with whatever information that we have and we ask the parents . . . . Unless additional information can be provided, we remove Yavapai Nation from future correspondence regarding the child. [¶] . . . [¶] [I]f we don't have any additional information because . . . the family has given us—and we have put in the ICWA-030 everything we have, we don't respond." T.'s counsel noted that the tribe was "specific about what they are requesting." County counsel said: "We gave them all the

information that we had. That's why we don't respond when there is this many cases that we have to deal with." The court stated: "And absent something that would demonstrate to the contrary, my understanding of the state of the law is that the [Bureau] is only required and expected to provide information by way of notification to the tribes, based on information they have, and not to affirmatively collect, I guess, or do an ancestry background check, to obtain information that was not provided by mother or father, so I find no problem with that approach." Father joined in the objection and requested that the court refrain from making an ICWA finding until the Bureau had responded to the Yavapai-Apache Nation. The trial court responded: "I don't believe [a response] is required, and I'm going to deny counsel's motion."

2. *Analysis*

Father contends that the court's finding of compliance with ICWA was in error because "[t]he Bureau sent incomplete and inaccurate notices that did not comply with the requirements of state and federal law, sent notices to tribes at addresses other than those listed in the Federal Register, and failed to respond to an Apache tribe's request for additional information." The Bureau maintains that it substantially complied with ICWA's notice provisions and that the court had sufficient information before it to find that T. was not an Indian child.[11]

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[11] The Bureau is correct that Father did not raise all of his current complaints before the juvenile court, even after he was served with a copy of the notices and after the ICWA documentation was presented at the section 366.26 hearing and reviewed by Father's counsel. Father's counsel objected only to the Bureau's failure to respond to the Yavapai-Apache tribe's request for additional information. However, "[t]he generally accepted rule in dependency cases is that the forfeiture doctrine does not bar consideration of ICWA notice issues on appeal. [Citation.] 'As this court has held, "[t]he notice requirements serve the interests of the Indian tribes 'irrespective of the position of the parents' and cannot be waived by the parent." [Citation.] A parent in a dependency proceeding is permitted to raise ICWA notice issues not only in the juvenile court, but also on appeal even where, as here, no mention was made of the issue in the juvenile court.' [Citation.]" (*In re Alice M., supra,* 161 Cal.App.4th at p. 1195.)

Father also has standing to raise ICWA notice omissions that relate to Indian heritage on T.'s maternal side. (See *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339

First, we address Father's contention that the notices omitted available information. Specifically, he points out that the notices failed to include a maiden name for T.'s maternal great-grandmother or a birthplace for her maternal grandmother. Father also states that the notices incorrectly identified T.'s paternal great-great-grandmother as her great-grandmother and did not provide all possible iterations of her name.[12] He contends: "If this ancestor was listed in tribal rolls as Sarah Harris, the tribe would not have been able to find her because that name was not provided to the tribe." Father also points out that there is no birth date or birthplace listed for T.'s paternal grandfather.

We are compelled to agree with Father that the juvenile court failed to ensure compliance with ICWA and that the section 366.26 order must consequently be reversed. "[ICWA] notice must include the name, birthdate, and birthplace of the Indian child; his or her tribal affiliation; . . . and information about the Indian child's biological mother, biological father, maternal and paternal grandparents and great-grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; current and former addresses; tribal enrollment numbers, and/or other identifying information. [Citations.]" (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630 (*Louis S.*); accord, *In re S.M.* (2004) 118 Cal.App.4th 1108, 1116 (*S.M.*); *In re C.D.* (2003) 110 Cal.App.4th 214, 225 (*C.D.*); § 224.2, subd. (a)(5); 25 C.F.R. § 23.11(b), (d).) The Bureau had "a duty to inquire about and obtain, if possible, all of the information about a child's family history" required under ICWA, including the full names (including maiden and married names and aliases), addresses, and dates and places of birth of those relatives with American Indian heritage. (*C.D.*, at p. 225; see also *S.M.*, at p. 1116; *Louis S.*, at p. 630.) That information, if known, must be included in the notices sent to the tribes or the BIA. (*C.D.*, at p. 225.)

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[both parents can raise ICWA issue even when only one has Indian heritage].) Thus, we will address the merits of Father's arguments.

[12] It was this relative who allegedly had Cherokee heritage, according to Janis. B.

We cannot escape the conclusion that the Bureau both failed to include known information on the notices and failed to fulfill its duty of inquiry. With respect to T.'s paternal relatives, it is clear, at the very least, that the Bureau had information regarding Sarah Thomas Booker-Harris Rogers or Sarah Thomas Booker-Rogers Harris that was not included in the notices sent to tribes and the BIA.[13] The notices did not include the name Harris. With respect to T.'s maternal family, it is apparent that the Bureau did not fulfill its duty of inquiry. The social worker spoke to the maternal great-grandmother on May 17, 2010 and June 2, 2010. The maternal great-grandmother would surely have known her own maiden name and the place of her own daughter's birth. Nonetheless, this information is not included on the notices sent to the tribes and BIA. The record contains no evidence that the social worker attempted to obtain this information, but was unable to do so. Accordingly, the juvenile court erred in finding that ICWA did not apply to T.

Reviewing courts have reversed termination orders when the purported notice does not contain known or easily obtainable information for the child's ancestors. (*S.M., supra,* 118 Cal.App.4th at pp. 1116–1118, 1123; see also *Louis S., supra,* 117 Cal.App.4th at pp. 631, 634.) The Bureau is not required to "cast about, attempting to learn the names of possible tribal units to which to send notices, or to make further inquiry with BIA." (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199.) "[T]he obligation is only one of inquiry and not an absolute duty to ascertain or refute Native American ancestry." (*In re Antoinette S., supra,* 104 Cal.App.4th at p. 1413.) However, "[t]he burden is on the [Bureau] to obtain all possible information about the minor's potential Indian background and provide that information to the relevant tribe or, if the tribe is unknown, to the BIA. [Citation.]" (*Louis S.,* at p. 630.) "Since the failure to give proper

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[13] On remand, the Bureau should clarify whether this relative was, in fact, T.'s paternal great-grandmother or her great-great-grandmother. The record is ambiguous on this point. And, although there is evidence in the record that neither Father or Janis B. knew birth dates of "the distant relatives," the Bureau should inquire about the birth date and birthplace of T.'s paternal grandfather.

notice of a dependency proceeding to a tribe with which the dependent child may be affiliated forecloses participation by the tribe, notice requirements are strictly construed." (*In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267.)

"[W]here notice has been received by the tribe . . . errors or omissions in the notice are reviewed under the harmless error standard." (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.) We cannot conclude that the omissions were harmless here. "Where there is reason to believe a dependent child may be an Indian child, defective ICWA notice is 'usually prejudicial' [citation], resulting in reversal and remand to the juvenile court so proper notice can be given. [Citations.]" (*In re Nikki R., supra,* 106 Cal.App.4th at p. 850.) "A deficiency in notice may be harmless when it can be said that, if proper notice had been given, the child would not have been found to be an Indian child and the ICWA would not have applied. [Citations.]" (*In re I.W., supra,*180 Cal.App.4th at p. 1530.) The ICWA notices were missing information regarding both T.'s maternal and paternal families that was either known to the Bureau, or readily obtainable from Janis B. and the maternal great-grandmother. Without such information, the noticed tribes could not conduct a meaningful search. (See *Louis S., supra,* 117 Cal.App.4th at p. 630 [one purpose "of giving notice to the tribe is to enable it to determine whether the minor is an Indian child[,] . . . [because] [n]otice is meaningless if no information or insufficient information is presented to the tribe to make that determination"].) In fact, that Yavapai-Apache Tribe wrote: "The information that has been provided on this case's ancestry is insufficient to conduct a search for membership eligibility. . . . [¶] We need additional information . . . ." The Bureau did not provide any additional information to the tribe. It would be speculation to assume the tribes and the BIA would have come to the same conclusion if all available information had been provided.[14]

[14] The Bureau does not argue that the results of ICWA notice in T.'s prior dependency necessitate a conclusion that, if notice was issued again, ICWA would again be found inapplicable. There is nothing in the record to indicate what information was

Accordingly, we must reverse and remand the order terminating parental rights to allow the notice inadequacies to be corrected. "The limited reversal approach is well adapted to dependency cases involving termination of parental rights in which we find the only error is defective ICWA notice. This approach allows the juvenile court to regain jurisdiction over the dependent child and determine the one remaining issue. The parties already have litigated all other issues at the section 366.26 hearing, and it is not necessary to have a complete retrial. Thus, the child is afforded the protection of the juvenile court, and, at the same time, his or her case is processed to cure the ICWA error, which is more expeditious than a full rehearing of all section 366.26 issues." (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 705.)

Having already concluded that a remand is appropriate in this case, we need not decide whether the Bureau sent ICWA notices to incorrect addresses for certain tribes. In light of our conclusion that new notice must be sent, we simply caution the Bureau to carefully examine both the notices and the mailing addresses to ensure there is no error. We also remind the parties that any issues regarding misidentification and missing information are better resolved in the juvenile court. (*Louis S., supra,* 117 Cal.App.4th at p. 631.) Thus, the parties should carefully review the ICWA notices issued on remand. Out of respect for T.'s interest in obtaining a permanent and stable home, this case should not be further delayed.

## III. DISPOSITION

The juvenile court's order terminating parental rights is reversed. The case is remanded to the juvenile court with directions to comply with the notice and inquiry provisions of ICWA. If, after proper inquiry and notice, the court determines T. is an Indian child, the juvenile court shall proceed in conformity with ICWA. If, however, the juvenile court determines, after proper inquiry and notice, that T. is not an Indian child,

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contained in the prior ICWA notices and, in any event, Father had only recently come forward with information that there was Indian heritage on his side of the family.

the order terminating parental rights and selecting adoption as the permanent plan shall be reinstated.

_____
Bruiniers, J.

We concur:

_____
Simons, Acting P. J.

_____
Needham, J.